

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

JAMES ADAMS, #108239,  
Plaintiff,  
)  
)  
)  
V.  
)  
) CASE ACTION-988-ID-2007 JAN -5 A 9:34  
ASSISTANT WARDEN CARTER  
DAVENPORT, ET, AL.,  
Defendants,  
)  
)  
)

RECEIVED

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

**MOTION IN OPPOSITION OF  
THE DEFENDANT'S SPECIAL  
REPORT**

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COMES Now, the Plaintiff, JAMES ADAMS #108239 by and through by and through himself Pro-se in the above styled cause and in accordance with this Honorable Court's December 13th, 2006 Order, offer the following Opposition to the defendants Special Report.

**PARTIES**

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(1.) The Plaintiff, JAMES ADAMS, is an inmate of the Alabama Prison system.

(2) Defendant Carter F. Davenport is employed by the ALABAMA D.O.C. as a Correctional Warden II, and is assigned to the EASTERLING CORRECTIONAL FACILITY.

(3) Defendant LATRICE GREEN is employed by the ALABAMA D.O.C. as a Classification Supervisor and is assigned to EASTERLING Correctional facility.

(4) Defendant TYRONE BARROW IS EMPLOYED BY THE A.D.O.C. as a Classification Specialist, and is assigned to the EASTERLING CORRECTIONAL FACILITY.

**EXHIBIT'S**

**EXHIBIT 1 - AFFIDAVIT OF JAMES ADAMS**

EXHIBIT 2 - ELMORE COUNTY TRANSCRIPT

EXHIBIT 3 - ALABAMA DEPARTMENT CORR. PROGRESS REVIEW FORM

EXHIBIT 4 - LETTER FROM THE CLERK OF VOLUSIA COUNTY, FLORIDA

**PLAINTIFF RESPONCE**

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...The Plaintiff state that the Defendants in this case has violated the plaintiffs Constitutional Rights by placing false information of a false charge in Plaintiffs prison file, the Defendants did this knowingly and with malice and is not immune from suit under the ELEVENTH AMENDMENT.....

**ARGUMENT**

\*\*\*\*\*

The plaintiff avers that he does not have a liberty interest in WORK RELEASE, but does have Classification dicisions based on factual information and not on false information.  
See MONROE V. THIGPEN 932 f. 2d 1437 (11th Cir. 1991)

.....In the case at bar the Plaintiff avers that Defendant Classification Specialist TYRONE BARROW, did in fact knowingly and maliciously place the charge of ESCAPE on the Plaintiff's; ALABAMA DEPARTMENT OF CORRECTIONS PROGRESS REVIEW FORM. Classification Coordinator LATRICE GREEN and Asst. Warden CARTER DAVENPORT agreed with the false charge and actions of defendant Barrow.

continued.....

The Plaintiff states that at the time of the plaintiff Annual Progress Review, Plaintiff met the criteria for Community Custody for placement in the A.D.O.C. work release program. However, due to defendant Barrow placing an Escape charge on plaintiff's progress review form, the plaintiff became ineligible for the A.D.O.C. work release program.

.....The A.D.O.C. criteria for Work Release Placement states: "Inmates convicted of the following crimes, past or present, will never be eligible for Community Consideration:

H. Inmates convicted of a violent crime on escape, S.I.R., P.D.L., or work release;

J. (ESCAPE) or attempted escape with serious injury past or present:

The Plaintiff states that the ALABAMA DEPARTMENT OF CORRECTIONS CLASSIFICATION system contains no inherent Constitutional invalidity, but becomes Constitutionally offensive only if the regulation is administered maliciously or in bad faith. See HENDKING V. SMITH 781 F. 2d 850, 852 11th CIR. 1986 Also see FRANCIS v. FOX 838 F. 2d 1147, 1149-50 11th CIR. 1988

The Plaintiff states that it was the act's of the defendants that caused the plaintiff to become ineligible for placement in the A.D.O.C. Work Release Program.

The Plaintiff avers that on or about Feb., 2004 to Jan. 20, 2005 he was incarcerated at a A.D.O.C. Work Release at Bullock Community Work Release, and on Jan. 20, 2005 he was Removed from this Work Release---

--- "Due to a detainer in Elmore County, Ala. and transferred to a Medium Prison, Easterling Correctional Facility.

It was at Easterling that the defendants in this case treated the plaintiff arbitrarily and capriciously and knowingly and maliciously placed a false charge of escape on his A.D.O.C. Progress Review Form that would prevent him from returning back to the Work Release Program.

.....It is clear that the Plaintiff has stated a cause of action under §1983 for violation of Due Process of the Fourteenth Amendment...See Monroe v. Thigpen, 932 F.2d 1437 (11th Cir. 1991)

The Eleventh Circuit has held that prison officials have wide-ranging deference in the adoption and Execution of policies and practices that in their judgment are needed to preserve internal order and discipline, and to maintain institutional security...See Wilson, 163 F.3d at 1295 Bell v. Wolfish 441 U.S. 520,547,99 S.Ct.,1861,1878 (1979).

However, Our U.S. Supreme Court and the Ala. Supreme Court has stated in McCammon v. Youngblood 2002 Ala. Civ. App. lexis that a state agent shall not be immune from Civil liability in his or her personal capacity when:

- (1) When the Constitution or laws of the UNITED STATES, or the Constitution of this State, or laws, Rules or Regulations of this State enactd or promulagated for the purpose of regulating the activities of a governmental agency require otherwise or;
- (2) When the State agent acts willfully, maliciously, fraudulently in bad faith, beyond his or her Authority or under a mistaken interpretation of the law....

"It is clear that the Defendant willfully and maliciously acted in bad faith, and beyond State Law and the Rules and Regulations of the A.D.O.C. when they entered a false Charge on the plaintiff's Progress Review form."

..."Defendant Burrow, did place this False Information in the Plaintiff's File....."

Defendant's Green and Davenport approved such action of Barrow..."

.....It is Clear that the Plaintiff has met by proof that the defendants, Public Official's actions Violated clearly Established Law in the A.D.O.C. Rule and Regulations and Procedure and is not entitled to qualified immunity.....See Rich v. Dollar 841 F. 2d 1558-64 (11th Cir. 1988.)

#### **CONCLUSION**

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There is a genuine issue of material fact, and the plaintiff is Entitled to Relief sought, by Ordering the A.D.O.C. to expunge the "FALSE INFORMATION" from his prison file, be placed back in the A.D.O.C. Work Release Program and \$50,000 against each defendant, and any other relief that this Court deem just and fair....

RESPECTFULLY SUBMITTED:

*James Adams*

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James Adams #108239  
1401 Hyw. 20 West  
DECATUR, ALABAMA 35601

CERTIFICATE OF SERVICE

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I hereby certify that I have, this 29 day of Dec. 2006. served a copy of the foregoing upon the defendants by placing same in the U.S. Mail, postage pre-paid and properly addressed as follows:

Address of Counsel

Hon. Troy King  
Office of the Attorney General  
11 South Union Street  
MONTGOMERY, ALABAMA  
36130

Respectfully Submitted,

JAMES ADAMS  
JAMES ADAMS # 108239

IN THE CIRCUIT COURT OF MORGAN  
COUNTY, ALABAMA

JAMES ADAMS #108239 )  
Plaintiff, )  
 )  
 v. ) CIVIL ACTION:  
 ) #06-988-ID-DRB  
Assistant Warden Carter )  
Davenport, ET,AL... )  
Defendants )  
 )  
 )  
 )

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2007 JAN -5 A 9:34

LETTIA P. HACKETT, CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

## AFFIDAVIT

Before me, the undersigned authority, a Notary Public In and for said County and State of Alabama at large personally appeared JAMES ADAMS #108239, who being known to me and deing by me first duly sworn, deposes and says under oath as follows:

My name is JAMES ADAMS # 108239, and I am a Alabama inmate incarcerated now at DECATUR COMMUNITY WORK CENTER in Decatur, Alabama, 1401 Hyw. 20 West 35601 and I am over the age of twenty-one (21) years of age.

.....On or about Feb. 2004 the Plaintiff was incarcerated at BULLOCK Community Work Release, and on Jan. 20, 2005 the plaintiff was removed from this work release due to a Detainer Warrant being issued out of Elmore County Ala. for the crime of Second Degree Poss. of a forged Instrument, and was transferred to Easterling Corr. Facility at 200 Wallace Dr. Clio, Ala, 36017.

On 4-28-2005, the Plaintiff entered a plea of guilty to the charge that was pending in Elmore County, Ala. and was sentenced by a Circuit Judge in Elmore County to 10years and said sentence was suspended and placed on probation, but the probation would start after the Defendant is to serve 24months in the A.D.O.C. and that defendant was granted the right to have Work Release. See EXHIBIT 1.

.....On 2-23-06 the Plaintiff received his Annual Review at EASTERLING CORR. FACILITY, Classification Specialist TYRONE BARROW, Classification Coordinator LATRICE GREEN and Ass. Warden CARTER DAVENPORT and the Plaintiff was present.

It was during this review that Classification spec. TYRONE BARROW refused to put the plaintiff back in for work release or community custody, citing: An Escape in VOLUSIA COUNTY, FLORIDA tha never happend, that he placed and wrote on the plaintiff's Annual Review that was approved by Classification Coordinator LATRICE GREEN and Ass. Warden CARTER DAVENPORT See Exhibit 2

The Plaintiff states that he never was charged for the crime of ESCAPE in VOLUSIA County, FLORIDA as a matter of fact the clerk of the SEVENTH JUDICIAL CIRCUIT of VOLUSIA County, FLORIDA sent a letter stating that no misdemeanor or felonys for the yearss of 1982 to disclose no case against the plaintiff. See EXHIBIT 3.

The Plaintiff states that MR. BARROW did place this ESCAPE on my progress review form knowing that this was false and GREEN and GREEN and DAVENPORT who was at this review approved such false information knowing that the ESCAPE was false information and based on their acts, the Plaintiff has false information in his record and based on that false information the plaintiff is not being able to participate in the A.D.O.C. work release.

JAMES ADAMS #108239

JAMES ADAMS

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS THE 29 DAY OF December 2006.

MY COMMISSION EXPIRES:

My Commission Expires 12/22/2008

  
NOTARY PUBLIC

Exhibit 2

ALABAMA JUDICIAL DATA CENTER  
ELMORE COUNTY  
TRANSCRIPT OF RECORD  
CONVICTION REPORT

CC 2005 000093.00 01  
SIBLEY G. REYNOLDS

CIRCUIT COURT OF ELMORE COUNTY

COURT ORI: 029015 J

STATE OF ALABAMA VS.  
ADAMS JAMES  
AIS# 108239B  
EASTERLING CORRECTIONAL  
CLIO AL 36017

DC NO: GJ 2003 000500.00  
G J: 245  
SSN: 424780223  
SID: 000000000  
AIS: 108239B

DOB: 09/10/1956 SEX: M HT: 5 08 WT: 160 HAIR: BLK EYE: BRO  
RACE: ( )W (X)B ( )O COMPLEXION: AGE: FEATURES:

DATE OFFENSE: 00/00/0000 ARREST DATE: 00/00/0000 ARREST ORI: 0290100

CHARGES @ CONV	CITES	CT CL COURT ACTION	CA DATE
POSS FORGED INSTR	13A-009-006	01 C GUILTY PLEA	04/28/2005
		00	00/00/0000
		00	00/00/0000

JUDGE: SIBLEY G. REYNOLDS PROSECUTOR: PARTRIDGE SAMUEL SCOTT

PROBATION APPLIED	GRANTED	DATE	REARRESTED DATE	REVOKED	DATE
(X)Y( )N 04282005	( )Y( )N		( )Y( )N	( )Y( )N	

15-18-8, CODE OF ALA 1975	IMPOSED	SUSPENDED	TOTAL	JAIL CREDIT
(X)Y( )N CONFINEMENT:	00 24 000	08 00 000	08 24 000	00 00 000
PROBATION :	00 24 000		00 24 000	
DATE SENTENCED: 04/28/2005		SENTENCE BEGINS: 04/28/2005		

PROVISIONS	COSTS/RESTITUTION	DUE	ORDERED
PENITENTIARY	RESTITUTION \$525.00	\$525.00	\$525.00
CONCURR SENT	ATTORNEY FEE \$750.00	\$750.00	\$750.00
SPLIT SENTENC	CRIME VICTIMS \$100.00	\$100.00	\$100.00
DOC/SAPP PGM	COST \$247.00	\$247.00	\$247.00
	FINE \$0.00	\$0.00	\$0.00
	MUNICIPAL FEES \$0.00	\$0.00	\$0.00
	DRUG FEES \$0.00	\$0.00	\$0.00
	ADDTL DEFENDANT \$0.00	\$0.00	\$0.00
	DA FEES \$0.00	\$0.00	\$0.00
	COLLECTION ACCT \$0.00	\$0.00	\$0.00
	JAIL FEES \$0.00	\$0.00	\$0.00
	<b>TOTAL</b>	<b>\$1622.00</b>	<b>\$1622.00</b>

APPEAL DATE	SUSPENDED	AFFIRMED	REARREST
( )Y( )N	( )Y( )N	( )Y( )N	( )Y( )N

REMARKS: THIS IS TO CERTIFY THAT THE  
ABOVE INFORMATION WAS EXTRACTED  
FROM OFFICIAL COURT RECORDS  
AND IS TRUE AND CORRECT.

SPLIT SENTENCE-SENTENCED TO SERVE 10 YRS DOC. SENTENCE IS SUSPENDED  
AND DEFT PLACED ON PROBATION. HOWEVER, AS A FIRST CONDITION OF PROB.  
DEFT IS TO SERVE 24 MONTHS IN DOC. TO ATTEND SAF WHILE INCARCERATED.  
TIME TO RUN CC WITH TIME SERVING ON MONTGOMERY COUNTY CASE.

*Larry Dozier*  
LARRY DOZIER

04/29/2005

OPERATOR: SUS  
PREPARED: 04/29/2005

*Exhibit 3*

DATE	JUDGE'S INITIALS	ACTIONS, JUDGMENTS, CASE NOTES
<i>Sentence Suspended</i>		
<p>The defendant's sentence is suspended, and the defendant is placed on  <input type="checkbox"/> court supervised probation for a period of _____;  <input type="checkbox"/> unsupervised probation for a period of _____;  <input type="checkbox"/> supervised probation for a period of _____;</p>		
<i>Split Sentence</i>		
<p>The defendant's sentence is suspended, and the defendant is placed on supervised probation for a period of  <i>24 month</i>, however, as a first condition of probation the defendant shall serve <input type="checkbox"/> a period  of <i>24 month</i> in the custody of the Commissioner of the Department of Corrections; <input type="checkbox"/> a period of _____ in the custody of the Sheriff of _____ County, Alabama; <input type="checkbox"/> a period of _____  in the custody of the Warden of the City of _____, Alabama, Jail. At the end of the defendant's  incarceration, he/she shall be transported back to this Court for the imposition of further terms and conditions of probation.</p> <p><i>(S) Court grants defendant right to have work release (S)</i></p> <p>Before being delivered into the custody of the Commissioner of the Department of Corrections the defendant shall be transported to the Substance Abuse Unit at Bryce State Hospital for treatment. When the defendant has received the maximum benefit of his treatment, he/she shall be delivered into the custody of the Commissioner of the Department of Corrections to serve the period of his/her incarceration.</p>		
<i>Split Sentence -- Boot Camp</i>		
<p>The defendant's sentence is suspended, and he is placed on supervised probation for a period of _____; however, as the first condition of his probation, the defendant shall serve up to 180 days in the custody of the Commissioner of the Department of Corrections and he shall successfully complete the Disciplinary, Rehabilitation Program. If the defendant successfully completes the program, he shall be returned to this Court for the imposition of further terms and conditions of probation. If the defendant does not successfully complete the program, he shall remain in the custody of the Commissioner of the Department of Corrections for a period of _____.</p>		
<i>Split Sentence -- Substance Abuse Treatment Only</i>		
<p>The defendant's sentence is suspended, and the defendant is placed on supervised probation for a period of _____. As a first condition of the probation the defendant shall be transferred to the Substance Abuse Unit at Bryce Hospital for treatment. When the defendant has received the maximum benefit of his/her treatment, the defendant shall be returned to this Court for the imposition of further terms and conditions of probation.</p>		
<i>Reverse Split Sentence</i>		
<p>The defendant's sentence is suspended, and the defendant is placed on supervised probation for a period of _____; however, as a first condition of probation the defendant shall serve <input type="checkbox"/> a period of _____ in the custody of the Commissioner of the Department of Corrections; <input type="checkbox"/> a period of _____ in the custody of the Sheriff of _____ County, Alabama; <input type="checkbox"/> a period of _____ in the custody of the Warden of the City of _____, Alabama, Jail. The period of the defendant's incarceration is postponed for a period of _____ months/years. On _____ (date) the defendant shall appear before this Court and show cause, if any he/she has, why the period of incarceration should be postponed indefinitely.</p>		

Exhibit #3

ALABAMA DEPARTMENT OF CORRECTIONS - PROGRESS REVIEW FORM - FEBRUARY 23, 2006  
 (COU122)  
 ALS #: 00108239B SSN: 424-78-0223 RACE/SEX: B/M DATE OF BIRTH: 09/10/1956  
 NAME: ADAMS, JAMES CUSTODY: MED5 SECURITY LEVEL: 4  
 INST: EASHERLING CORRECTIONAL CENT TIME SRVD: 02/08/814 LAST DISC: 07/22/2004  
 CRIME: CRM POSSE FORGED INSTR II MFL REL DT: 06/10/2008 ACTIVE DET: 0

DISC: VIOLATION OF INSTIT. RULES OR PRL CONS: 00/00/0000 EDUCAT LEV: 11

WL/PGM: Inst. Assign

PRIM OCCUP: LABORER - RANCH, FARM HAND - L

RECOMMENDED INSTITUTION: Staton for Family Ties RECOMMENDED CUSTODY: MEDIUM

JUSTIFICATION: ANNUAL REVIEW: Repeat, multi-state offender serving a 5 yearterm for CPFI II x 2, TOPI, TOP III ( subj. stole and cashed victims checks) & CPFI II (source doc. req.

most recently on 02/16/06). No sex convictions noted. Extensive criminal records include

1973/GL, 1976/A&B on Officer (Disp. Unknown), 1977/Burglary & GL x 2, 1978/Unarmed

Robbery (FL), 06/26/1982/Escape (FL—final disp. req. most recently on 01/24/06),

1990/Cocaine Poss (Atlanta), 1991/Dist. Cocaine, Robbery (Gun)—Atlanta PD—final disp. req.

most recently on 01/24/06. Substance Abuser w/01/04 8-Week Sap completion @ Elmore, has

AA/NA attendance. Recommend no changes in custody due to lack of source documentation,

overall criminal record & nature of subj. crimes. Recommend a lateral to Staton for Family Ties.

I CERTIFY ENEMY LIST WAS REVIEWED AND UPDATED: NKE, COETS(OK)2-27-06 <sup>146</sup>  
R. Jones, Bayou 02-23-06 APP. S/L:

CLASSIFICATION SPECIALIST B. Jones 02-23-06 WARDEN OR DESIGNEE C. Johnson 23 FEB 06

PSYCHOLOGIST/PSYCHOLOGIST'S ASSOC. B. Jones 02-23-06 CLASSIFICATION COORDINATOR DATE

CENTRAL REVIEW BOARD ACTION

APPROVED

DENIED; DIVERTED TO: \_\_\_\_\_

REASONS: \_\_\_\_\_

Rational None.

Editorial 1/31/06

CRB MEMBER

DATE

APPROVED

DENIED; DIVERTED TO: \_\_\_\_\_

REASONS: \_\_\_\_\_

CRB MEMBER

DATE

APPROVED

DENIED; DIVERTED TO: \_\_\_\_\_

REASONS: \_\_\_\_\_

CRB MEMBER

DATE

FINAL DECISION: INST Staton CUSTODY Med DATE 3/1/06

DATE INMATE INFORMED: \_\_\_\_\_

INMATE'S SIGNATURE: X-500 VOSA DMC 1582-391

LAST ACTION 2/10/SPR REL Church of Christ DNA <sup>2/17/06</sup> SKILLS: Food Service Worker

Psychmeds: NO

KCF

Diabetic: NO

**DIANE M. MATOUSEK**  
CLERK OF THE CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT - VOLUSIA COUNTY, FLORIDA

Exhibit C

#4

PLEASE REPLY TO:  
Felony Division  
P.O. Box 6043  
DeLand, FL 32721-6043

May 26, 2006

JUN 07 2006

**RE: Record Search**

Name: James Adams  
D.O.B.: 09/10/56

To Whom It May Concern:

Please be advised that a search of the misdemeanor and felony records of Volusia County, Florida, for the years of 1982 to 1982, discloses no cases against the above mentioned individual.

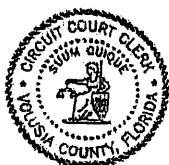
If our office can be of any further assistance, please do not hesitate to contact us at the above address.

Sincerely,

DIANE M. MATOUSEK  
Clerk of the Circuit Court

By:

Teresa R. Daugherty  
Deputy Clerk



C: General Correspondence  
CL-0579-0503